

ISA

ISA - Information
Sharing Agreements.
Building Eu agreements
for the posting
of workers in the
construction sector
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Guidelines

Agreement between the Social Insurance Institution (ZUS) (Poland) and SOKA-BAU (Germany)

Author: Jakub Kus (ZZ Budowlani)

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Risks or concerns addressed by the agreement

SOKA-BAU is a sectoral fund, established as a paritarian institution, tasked with protecting all employees of the construction sector in Germany - including employees of Polish companies working in Germany. Every company operating in the construction industry in Germany is required to register at SOKA-BAU. Companies must report new employees on an ongoing basis and pay monthly contributions to secure employee leave. The amount of money paid by the employer is refunded to the employee as paid leaves. The amount of these contributions is deducted from the gross monthly salary. If the employee has not used the leave and does not want to carry it over to the next year, SOKA-BAU pays an equivalent for the unused leave. This is the most common solution, because Polish posted workers do not usually spend their holidays in Germany.

As there is no institution structurally similar to SOKA-BAU in Poland and the employees receive paid holidays on the basis of the Labour Code, in the process of posting employees, there are often doubts as to the correctness of the financial settlements of employers providing services in Germany. SOKA-BAU is a private institution, and the Social Insurance Institute (ZUS) is a public institution responsible for social security. Before the conclusion of the agreement, it was therefore necessary to resolve a number of legal problems.

The concluded agreement is to eliminate the doubts and problems of both organisations, described below.

ZUS:

Has the employer included a leave allowance (or equivalent) through a Holiday Fund in another EU country in the contribution assessment for the employee posted to Germany?

SOKA-BAU:

Can funds for contributions for benefits and equivalents paid out by the holiday fund be lawfully transferred to Polish employers?

Can funds be transferred to ZUS, instead, a public institution normally accepting contributions directly paid by employers?

Objectives

The agreement supports the proper flow of information between a private (paritarian) holiday fund in Germany and a public insurance institution in Poland to make sure social security contributions are paid on sums paid by Polish sending undertaking to the fund and to simplify reimbursement for unused leave to the workers. Once the posting ends, workers can claim back the equivalent for the unused leave to SOKA BAU in several instalments or as a lump sum. In these cases, the agreement enables SOKA BAU to have the payment intermediated by ZUS rather than by the employer.

'Business case' for adopting the agreement from the standpoint of stakeholders

Workers:	The agreement concerns the exchange of information between a social security institution and a sectoral fund; employees and employers are not party to the agreement. However, the agreement allows the posted worker to be sure that the due benefits will be properly paid and documented in the social security system, possibly leading to better coverage by social security benefits as well. In the event of failure to use the leave entitlement, it allows the employee to pursue claims regarding the payment of the due amount.
Companies:	The agreement is very important for employers posting employees to construction sites in Germany. An employer registered with SOKA-BAU and paying a contribution to the holiday fund can be sure to meet the legal requirements of both countries and that both competent institutions are informed of this fact. From the employer's point of view, this limits the administrative procedures related to informing the Polish Social Insurance Institution.
Unions:	Trade unions in Germany and Poland, using access to public information, can receive data on the accuracy of the process of posting workers, compliance with the provisions of collective agreements, individual employment contracts and the labour code. Beyond having the right to obtain aggregated information, they can apply to the labour inspectorate for an inspection at the designated employer and receive a report on the inspection results. This allows both the identification of the scale of infringements of the law by employers and the assessment of the scale of the process of posting workers from Poland to Germany.
Employers' organisations:	Employers' organisations in the construction industry in Germany and Poland, using the access to public information of both institutions, receive additional data on the correctness of the process of posting workers as well as on the activity of Polish companies posting in Germany. This allows the scale of the process of posting workers from Poland to Germany to be assessed and compared with their own data on this subject. However, it should be emphasized that the largest employers' organisations in Poland are only interested in the posting process to a small extent. Only specialized associations of entities posting workers deal with this area.
Sectoral funds:	So far, sectoral sector funds in construction have not been established in Poland. However, the agreement facilitates the operation of the German SOKA-BAU fund.
Institutional actors:	<p>The agreement has a significant impact on the nature of the information exchange system between institutions dealing with employee insurance in the construction industry and in the field of holiday pay. It is one of two agreements concluded by the Polish Social Insurance Institution with sectoral funds in the construction industry (the other being with BUAK in Austria). The agreement solves many administrative problems resulting from the differences in insurance services for posted construction workers in EU countries. Based on both agreements, the Polish Social Insurance Institution applied to the liaison bodies of other EU countries for similar cooperation and received responses from 12 Member States by the end of 2019. Currently, the most advanced are the arrangements with the French sectoral fund in order to determine issues concerning the payment of benefits and equivalents and the operation of holiday funds.</p> <p>The agreement between ZUS and SOKA-BAU is important for the posting of construction workers from Poland because in 2019 46.34% (52,162) of all workers posted from Poland to work in the construction industry worked in Germany. In 2020 (until September), this number was 28,258, i.e. a 47.96% share.</p>

Main features of the agreement

The tasks assigned by the agreement to each party are summarised below.

SOKA-BAU:

- preparation of software enabling the collection and aggregation of data necessary for settlement by ZUS;
- monthly submission of the lists of payers and insured persons to ZUS;
- transfer of funds for contributions directly to the individual contributory account number of a given contribution payer (NRS).

ZUS:

- provision of the list of individual contributory account numbers (NRS) assigned to contribution payers posting employees to work in Germany;
- maintenance of the list of coordinators in field departments responsible for the implementation of the task;
- verification of whether employers have included in the settlement documents the equivalents and benefits paid by SOKA-BAU and due contributions (preparation of documents ex officio);
- verification of whether the payer has paid contributions on the part financed from the fund.

Process of adoption and role of different involved stakeholders

The process of concluding the agreement between ZUS and SOKA-BAU was preceded by long-lasting preparation and consultation, as listed below. The agreement was signed on 24 May 2018.

July 2014 – May 2018

1. Contact established between SOKA-BAU and ZUS via the German embassy in Poland.
2. Working meetings and working exchange of information concerning the legal situation in Germany and Poland. These included the conditions that should be met for ZUS to receive funds directly from the Holiday Fund, settle them on the accounts of contribution payers and record them on the insured persons' accounts.
3. Implementation of the e-contribution project (e-składka) by ZUS, under which solutions were implemented to allow payers to pay contributions with one payment to the individual contribution account number (NRS) assigned by ZUS.

EU level and national level legal aspects smoothing or hampering the agreement

There are no legal regulations in European law that could hinder the implementation of the agreement. The agreement is part of the construction of the European system of social security coordination, insofar as it enables ZUS to make sure contributions paid for leaves to SOKA-BAU are subject to social security contributions in Poland. In addition, SOKA BAU is explicitly entitled by collective agreement to share data with ZUS.

The identification of a common European tool for the exchange of data on social insurance, including the one covering the issues of insurance for posted workers, is still a significant problem. ZUS is very advanced in the work on digitising the process of collecting and analysing insurance data. It is to be expected that the process of data exchange between ZUS and SOKA-BAU will also be further digitised. One of the challenges is to make this data digitisation process compatible with the EU activities on building common tools.

Actions implemented to address hampers

Information sharing and direct transfer of contributions to ZUS allow for faster identification of infringements of the law by employers. Usual basic violations include failure by the employer to declare sums intermediated by the holiday fund in the reports to the relevant social insurance institution and tax authorities. In 2019, not many violations were identified.

Outcomes of the agreement

Funds transferred by SOKA-BAU In the period 06.2018 – 08.2020 – PLN 6.0 million

Average monthly number of insured persons for whom SOKA-BAU pays contributions

In 2019: In respect of equivalentents for the unused leave – 343 employees

In 2020: In respect of equivalentents for the unused leave – 390 employees

Based on the agreement, both SOKA-BAU and ZUS conduct information campaigns aimed at employers and posted workers. In addition, in agreement with SOKA-BAU, ZUS issues binding interpretations of regulations for companies regarding holiday benefits.

ABOUT

The objectives of the ISA Project are to promote and reinforce transnational cooperation between authorities and stakeholders involved in the posting of workers in the construction sector, by promoting the establishment of information sharing agreements meant to monitor and ease the posting of workers.

The project will build on practices in place between sectoral funds in Italy, in Germany, Austria and France, where sectoral funds, backed by the governments, negotiated and successfully concluded agreements simplifying procedures necessary to post workers abroad, while making sure employers posting workers abroad are in compliance with the payment of due wage elements (like the holiday pay), and easily allowing to check relevant information in the sending country if the need arises.

www.isaproject.eu



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